6-4-1976

William C. Jacobs v. Lexington-Fayette Urban County Government and Ed Hahn, County Sheriff

Reply Brief 1976-SC-0086

REPLY BRIEF

560 SW 2d 10

SUPREME COURT OF KENTUCKY

FILE NO. 76-86

WILLIAM C. JACOBS ..... APPELLANT

V.

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT and
ED HAHN, COUNTY SHERIFF ..... APPELLEES

APPEAL FROM FAYETTE CIRCUIT COURT
CIVIL BRANCH, THIRD DIVISION
HONORABLE ARMAND ANGELUCCI

REPLY BRIEF FOR APPELLANT

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This is to certify that copies of the within reply brief have been served on Hon. Jerry Anderson, 111 Cheapside, Lexington, Kentucky 40507; Hon. Donald D. Wagonner, Municipal Building, Lexington, Kentucky 40507; Hon. George Rabe, Municipal Building, Lexington, Kentucky 40507 and the Honorable Armand Angelucci, Judge, Civil Branch, Third Division, Fayette Circuit Court, Courthouse, Main Street, Lexington, Kentucky 40507, pursuant to RAP 1.250 on this the 24 day of May, 1976.

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MAY IT PLEASE THE COURT:

PURPOSE OF THE BRIEF

The Appellees, in their brief, either intentionally, or inadvertently, have misstated this case, and the argument made by the Appellant with respect to the Appellant's claim that the Appellee-Government is prohibited by Section 157 of the Kentucky Constitution from levying an ad valorem tax in a taxing district in excess of $.50 per $100.00 of assessed valuation. Appellees repeatedly refer to the

ad valorem tax levied by the government in the Full Urban Services Taxing District as "Second Class City taxes" or "city taxes."

The Appellees erroneously assert that the issues raised on this appeal were never raised at the trial court level.

Further, at the bottom of page 4 and the top of page 5 of their brief, Appellees, inexplicably assert that the position of Appellant is that the government is subject to both city and county restrictions in the exercise of city powers and city and county restrictions in the exercise of county powers. Such a misstatement of the position of Appellant by Appellees is so foreign to Appellant's argument, it could be thought that Appellees intentionally sought to mislead the court or blur and confuse the issues.

Recognizing the difficulty facing this Appellant in trying to correct and clarify misstatements made by Appellees in their sometime incoherent brief, the effort will nevertheless be made. Hopefully, this court's attention can be redirected to the principal issue in this case, which is: Section 157 of the Kentucky Constitution prohibits the levying of an ad valorem tax in a taxing district in excess of $.50 per $100.00.

QUESTION TO WHICH BRIEF ADDRESSED

1. Where an Urban County Establishes 2 Taxing Districts and Levies an Ad Valorem Tax in 1 such District at a Rate in Excess of $.50 per $100.00 on all Taxable Property, Real, Personal and Mixed, the Tax levy is Unconstitutional as Violating the Following Sections of the Kentucky Constitution: Section 157 (with Respect to Maximum Rates for Tax Districts); Section 171 (with Respect to Uniformity); and Section 172A (with Respect to Limiting Differences in Rate to the Class of Property which includes the Surface of the Land).

ARGUMENT

WHERE AN URBAN COUNTY ESTABLISHES 2 TAXING DISTRICTS AND LEVIES AN AD VALOREM TAX IN 1 SUCH DISTRICT AT A RATE IN EXCESS OF $.50 PER $100.00 ON ALL TAXABLE PROPERTY, REAL, PERSONAL AND MIXED, THE TAX LEVY IS UNCONSTITUTIONAL AS VIOLATING THE FOLLOWING SECTIONS OF THE KENTUCKY CONSTITUTION: SECTION 157 (WITH RESPECT TO MAXIMUM RATES FOR TAX DISTRICTS); SECTION 171 (WITH RESPECT TO UNIFORMITY); AND SECTION 172A (WITH RESPECT TO LIMITING DIFFERENCES IN RATE TO THE CLASS OF PROPERTY WHICH INCLUDES THE SURFACE OF THE LAND).

An urban county is a new creature of local government in Kentucky which "may exercise the constitutional and statutory *rights, powers, privileges,*

immunities and *responsibilities* of counties and the cities of the highest class within the county . . . ." [KRS 67A.060(1)] (Emphasis added). It is encumbered by none of the constitutional or statutory limitations devolving on counties and cities.

It is understandable why the Appellee-Government, like a chameleon becomes a second class city when it suits its purposes, or an urban county when that designation relieves it of the strictures of second class city status.

On this appeal, the Appellee-Government is wearing its "second class city" hat, claiming that it has levied in the Full Urban Services Taxing District a "second class city tax." This court specifically held in *Holsclaw* v. *Stephens,* Ky., 507 SW2d 462, at page 476 as follows:

> "We hold that the voters of Fayette County abolished the City of Lexington and its government when they adopted urban county government."

KRS 67A.060, above quoted, this court in Holsclaw, supra, and the Appellant in his original brief herein, (see page 7 thereof), are all in accord, to the effect, that *none* of the restrictions or limitations on powers of second class citites are applicable to urban counties. Thus, the *limitation* on

the taxing power of second class cities found in Section 157 of the Kentucky Constitution, i.e., $1.50 per $100.00 of assessed valuation is not a limitation on the taxing powers of an urban county, and irrelevant.

By establishing separate taxing districts as the Charter does, Section 2.02, and as the parties have stipulated, the $.50 per $100.00 limitation on ad valorem tax rates for *taxing districts* in Section 157 of the Kentucky Constitution becomes the only applicable constitutional limitation on tax rates.

In stating the position of Appellant at the bottom of page 4 and the top of page 5 of their brief, Appellees have stated it in reverse. Urban counties are not limited by either city or county restrictions in the exercise of the general powers of cities and counties as this court held in Holsclaw. Urban counties by statute are given the general powers of local governments, for example, the power of eminent domain, the general power of taxing, etc.

Further, the Appellees seem to be responding to arguments which were not made by the Appellant. At pages 9 and 10 of their brief, Appellees discuss a non-issue pertaining to personal property taxes, somehow stating that the issue wasn't raised at the trial court level and then stating that it was before the trial court, then stating they would answer the question on the merits and, then, making no further mention of it.

The Appellant has pointed out in his brief that Section 172A of the Kentucky Constitution permits the General Assembly to allow for reasonable differences in ad valorem rates on that class of property "which includes the surface of the land." Since the ordinance which is the subject of this action provides for different rates of taxation upon all property, real, personal and mixed within the territorial limits of the authority levying the tax, Section 172A of the Kentucky Constitution may not be resorted to by Appellees as the authority for the tax. Appellant is not complaining, particularly about personal property taxes, only that if there is a variation in rates, it may only apply to property "which includes the surface of the land."

With respect to the contention of Appellees that Section 171 and 172A of the Kentucky Constitution were not invoked at the trial court level, see "Original Plaintiff's Response to Defendants' Memorandum," Record on Appeal, Pages 69, 70 and 71 and Appellant's "Motion to Amend Findings of Fact and Conclusions of Law," Record on Appeal, pages 87 and 88.

At page 11 of their brief, Appellees respond to another argument not made by the Appellant, that is, that Appellant is claiming that the complained of tax is a "county tax." Appellant makes no such argument, the confusion apparently being that the maximum tax rate for a taxing district under

Section 157 of the Kentucky Constitution is $.50 on $100.00 which, coincidentally, happens to be the maximum tax rate allowable by Section 157 in counties.

It should be emphasized that the court should not be mislead by the repetitious designation by the Appellee-Government of the tax levied in the Full Urban Service Taxing District as being "second class city taxes" or "city taxes." Nor is the argument of the Appellee-Government sound that if the "second class city taxes" are "reasonable" before the inception of the urban county, they are "reasonable" now.

Respectfully submitted,

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